

The Administrative Law Judge found at step one in the sequential evaluation process that Plaintiff performed work at substantial gainful activity levels. Plaintiff argued in his brief to the Court that the ALJ erred in failing to consider the evidence that Plaintiff was able to maintain his employment only because he worked under “special

conditions,” such that the presumption of substantial gainful activity was negated. The Magistrate Judge agreed with Plaintiff and recommends that the decision of the Commissioner be reversed and the case be remanded for consideration of steps two through five of the sequential evaluation process.

The Commissioner objects on the ground that the Magistrate Judge was incorrect in stating that the ALJ determined that there were “no special conditions” when the ALJ acknowledged that Plaintiff was assisted by a job coach. The Commissioner also maintains that the Magistrate Judge “reweighs” the record evidence, which is not the province of the courts.

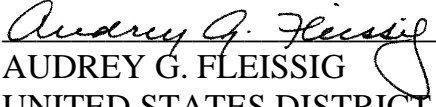
Upon careful consideration of the Report and Recommendation and the record in this case, the Court concurs with the recommendation of the Magistrate Judge that the Commissioner’s decision should be reversed and the case remanded. As the Magistrate Judge noted, the ALJ discounted the job coaching services based only Plaintiff’s testimony, which was inherently unreliable on this matter, and disregarded of all the other evidence of “special conditions.”

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that the decision of the Commissioner denying Plaintiff’s application for supplemental security income under Title XVI of the Social Security Act is **REVERSED** and this case is **REMANDED** to the Commissioner for consideration of steps two through five of the sequential evaluation process.

A separate Judgment shall accompany this Memorandum and Order.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 19th day of December, 2013.